



**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
097116.537	07/16/98	SAMARAS	389301

MICHAEL R FRISCIA
FRISCIA & NUSSBAUM
ONE UNIVERSITY PLAZA
HACKENSACK NJ 07601

PM51/0317

EXAMINER
ARK.D

ART UNIT	PAPER NUMBER
3643	5

DATE MAILED: 03/17/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/116,537

Applicant(s)
Samaras

Examiner
Darren Ark

Group Art Unit
3643



☒ Responsive to communication(s) filed on Feb 23, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-20 is/are pending in the application.

Of the above, claim(s) 3, 10-14, 18, and 19 is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1 and 7-9 is/are rejected.

☒ Claim(s) 2, 4-6, 15-17, and 20 is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☒ The drawing(s) filed on Jul 16, 1998 is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 3643

DETAILED ACTION

Election/Restriction

1. Claims 3, 10-14, 18-20 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b) as being drawn to a non-elected Species. Election was made **without** traverse in Paper No. 4.

Drawings

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: no. 28, torso is not shown in Fig. 1. Correction is required.

Claim Objections

3. Claims 7, 8, 15-17, 20 are objected to because of the following informalities:
claim 7, line 1, "a" before "upper" should be changed to "an";
claim 8, line 2, "a" before "upper" should be changed to "an";
claim 15, line 1, "an" before "decoy" should be changed to "a";
claim 20, line 1, "a" before "upper" should be changed to "an";.
Appropriate correction is required.

Art Unit: 3643

Claim Rejections - 35 U.S.C. § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 1 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Thorsnes, Jr. 3,927,485.

Thorsnes, Jr. discloses a body housing (14), a head assy. with a head and neck (16 which is capable of being blown by the wind), connection means (46), and counterbalancing means (56).

6. Claims 1, 7 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Lanius 5,274,942.

Lanius discloses a body housing (14), a head assy. with a head and neck (30 which is capable of being blown by the wind), connection means (62, 70, 74, 66 & pins 78, 82), and counterbalancing means (34, 42).

In reference to claim 7, Lanius discloses a support stake (generally 114).

7. Claims 1, 7, 8 rejected under 35 U.S.C. 102(b) as being clearly anticipated by McKinney 4,965,953.

Art Unit: 3643

McKinney discloses a body housing (12), a head assy. with a head and neck (14 which is capable of being blown by the wind), connection means (38), and counterbalancing means (40).

In reference to claim 7, McKinney discloses a support stake (generally 16).

In reference to claim 8, McKinney discloses a spring (40) attached to the upper end of the stake (at 24) against a seat (42).

Claim Rejections - 35 U.S.C. § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thorsnes, Jr. 3,927,485 in view of Balmer 5,191,730.

Thorsnes, Jr. does not disclose a plastic sheet attached to the body housing. Balmer discloses a plastic sheet (wing elements 13, 14 made of polypropylene or polyethylene) attached to the body housing (10). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to employ the plastic sheet of Balmer and attach it to the body housing of Thorsnes, Jr. in order to

Art Unit: 3643

provide more life-like decoys with wing elements which are able to move under the influence of very little wind.

10. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lanius 5,274,942 in view of Balmer 5,191,730.

Lanius does not disclose a plastic sheet attached to the body housing. Balmer discloses a plastic sheet (wing elements 13, 14 made of polypropylene or polyethylene) attached to the body housing (10). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to employ the plastic sheet of Balmer and attach it to the body housing of Lanius in order to provide more life-like decoys with wing elements which are able to move under the influence of very little wind.

11. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over McKinney 4,965,953 in view of Balmer 5,191,730.

McKinney does not disclose a plastic sheet attached to the body housing. Balmer discloses a plastic sheet (wing elements 13, 14 made of polypropylene or polyethylene) attached to the body housing (10). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to employ the plastic sheet of Balmer and attach it to the body housing of McKinney in order to provide more life-like decoys with wing elements which are able to move under the influence of very little wind.

Art Unit: 3643

Allowable Subject Matter

12. Claims 15-17 & 20 are allowed.

13. The following is an examiner's statement of reasons for allowance:

In reference to claim 15, the prior art of record does not disclose a method for using a decoy comprising attaching a hook to the housing above the open front end, attaching a loop to the neck, attaching a counterweight, by means of an arm, to the head and neck assembly, and hanging the head and neck assembly from the housing by placing the loop on the hook.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

14. Claims 2, 4-6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

15. The Examiner would like to point out with regard to claim 8 that the prior art of record does not disclose the spring attached to the upper end of the support stake against a seat attached to an upper portion of the body housing within the body housing to allow for the additional movement of the decoy in a plurality of direction,

Art Unit: 3643

wherein the spring extends substantially vertically between the upper end of the stake and the seat.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Darren Ark** whose telephone number is **(703) 305-3733**. The examiner can normally be reached on **Monday-Friday** from **8:30-6:00**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Michael Carone**, can be reached on **(703) 306-4198**. The fax phone numbers for the organization where this application is proceeding is assigned is **(703) 306-4195** or **(703) 305-3597**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is **(703) 308-1113**. If all else fails, call **1-800-PTO-9199**, this is the Patent and Trademark Helpline.

DWA

March 11, 1999


MICHAEL J. CARONE
SUPERVISORY PATENT EXAMINER